



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

Robert F. Bauer, Esq.
Perkins Coie, LLP
607 Fourteenth Street, N.W.
Washington, D.C. 20005-2003

DEC 11 2009

RE: MUR 6110
Obama for America and Martin Nesbitt, in
his official capacity as treasurer

Dear Mr. Bauer:

On November 3, 2008, the Federal Election Commission notified your clients, Obama for America and Martin Nesbitt, in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended.

On November 17, 2009, the Commission, on the basis of the information in the complaint and information provided by your clients, dismissed the allegation that Obama for America and Martin Nesbitt, in his official capacity as treasurer, violated the Act based on the alleged receipt of contributions from Square Root Sales, Senate Realty Corporation, and M&A Development, LLC. in connection with the Concert for Change. For purposes of your disclosure reports, however, please note that the available information in this matter indicates that individuals related to these three entities, Chase Alan Moore, Lisa Williams and Anthony Washington, paid the costs of the Concert for Change that benefitted Obama For America, which may constitute in-kind contributions from these three individuals to Obama for America. See 2 U.S.C. § 431(8)(A) and 11 C.F.R. § 100.52(d); pages 6-7 of the enclosed Factual and Legal Analysis. Also on November 17, 2009, the Commission found no reason to believe that Obama for America and Martin Nesbitt, in his official capacity as treasurer, violated 11 C.F.R. § 102.17(c) in connection with the Concert for Change. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information

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If you have any questions, please contact Michael Columbo, the attorney assigned to this matter at (202) 694-1650.

Sincerely,



Mark Allen
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Obama for America
and Martin Nesbitt,
in his official capacity as treasurer

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Robert J. Kabel, as Chairman of the District of Columbia Republican Committee. See 2 U.S.C. § 437g(a)(1).

II. INTRODUCTION

The complaint alleges that Obama for America (“OFA”), the principal campaign committee of Barack Obama for his 2008 presidential campaign, violated the Federal Election Campaign Act of 1971, as amended (“the Act”), by accepting prohibited corporate in-kind contributions and failing to include the proper joint fundraising notice and disclaimers in solicitations for a fundraising event that took place in September 2008 called the “Concert for Change.” *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 102.17(c).

The Concert for Change (the “Concert”) was a fundraising event that took place on September 20, 2008, at the Atlas Theater in Washington, D.C. According to one of the Concert’s web pages, the Concert raised \$13,500 in contributions. The complaint alleged that corporations sponsored the Concert and, therefore, that OFA knowingly accepted corporate contributions in violation of 2 U.S.C. § 441b(a). *See* Complaint at 3-4. The complaint also alleged that the Concert’s promotional materials, including a web page on the OFA website, constituted solicitations for the Obama Victory Fund (“OVF”), a joint fundraising committee benefitting OFA and the Democratic National Committee (“DNC”) and, therefore, OFA violated

11 C.F.R. § 102.17(c) by failing to include joint fundraising notices in the solicitations. *See* Complaint at 4.

The businesses that allegedly made the prohibited in-kind corporate contributions are Square Root Sales, Senate Realty Corporation, and M&A Development, LLC ("Businesses"). As discussed in greater detail below, it appears that the Businesses, which were identified in some of the Concert's promotional materials as "sponsors" of the Concert, did not use their general treasury funds to pay the costs of the Concert. Rather, individuals affiliated with the Businesses used their personal funds to pay the costs of the Concert.

OFA asserted in its response that it was unaware of the Concert until the complaint was filed and that the Concert was not an official or authorized event. The Concert's organizer(s) were not identified in the complaint and there is no information suggesting that they formed an enterprise with ongoing activities or assets.

For the reasons set forth below, the Commission dismisses the allegation that OFA violated the Act based on the alleged receipt of prohibited corporate contributions from the Businesses in connection with the Concert. Additionally, the Commission finds no reason to believe that OFA violated 11 C.F.R. § 102.17(c) in connection with the Concert.

III. FACTUAL SUMMARY

According to the complaint, unknown individuals promoted the "Concert for Change" by distributing flyers and signs near the Eastern Market Metro in Washington, D.C., and by establishing web pages that solicited contributions on the OFA and DNC websites. Some of the Concert's promotional materials, which were attached to the complaint, state that the Businesses were "in-kind sponsors" of the Concert. The Concert's unknown organizer(s) rented the Lang Theater, a space within the Atlas Theater at 1338 H Street, N.E., in Washington, D.C., that

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1 normally rents for \$6,000, and arranged for singer Steve Washington and the "Doug Elliot
2 Orchestra" to perform. According to the Concert's promotional materials, the event included a
3 cash bar and valet parking. The theater also normally requires event organizers to hire security
4 guards and pay insurance. Sound equipment is not included in the cost of the theater and may
5 also have been an additional expense. According to its website, www.aconcertforchange.org, the
6 event's organizers were able to raise \$13,500. Of this, it appears that the concert raised \$1,780
7 through online contributions using its webpage on OFA's MyBO website, \$155 through its pages
8 on the DNC PartyBuilder website, and rest were collected at the theater box office. The
9 available information does not indicate whether or how the theater box office collected the
10 required contributor information and forwarded the contributions to OVF (or OFA or DNC).¹

11 **A. Concert for Change Sign**

12
13 The complaint alleged that the Concert's organizer(s) distributed flyers and posted signs
14 for the Concert in the Eastern Market area of Washington, D.C. Complaint at 3. A sign,
15 submitted as an attachment to the complaint, describes the Concert as a "concert-cabaret
16 fundraiser for The Obama Campaign" and provides a website address,
17 www.aconcertforchange.org. The sign also states, below the official logo and web address of the
18 Obama campaign (OFA), "FUNDRAISER." *Id.* The image of the OFA logo is of poor quality,
19 however, as if it was a copy enlarged many times. Near the bottom of that panel, it states "Many
20 thanks to our individual in-kind contributors (sponsors) affiliated with the following
21 organizations" above the names of five people and the names and logos of the Businesses. *Id.*
22 The first name is that of Chase Alan Moore along with the name and logo of "Square Root

¹ The Commission has no information as to what the Concert's organizers did with the contributions collected at the Atlas Theater box office.

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1 Sales" with text which states "real estate marketing, sales, and management." The second set of
2 names, Lisa Williams, Cher Castillo Freeman, and James Williams, is printed above the name
3 and logo of Senate Realty Corporation. The final name and logo combination is that of Anthony
4 Washington and M&A Development.

5 **B. Obama For America Website**
6

7 The Concert's sign includes a website address for the Concert,
8 www.aconcertforchange.org. That web address redirects visitors to a Concert webpage on the
9 My Barack Obama ("MyBO") section of the OFA website. The MyBO section of the OFA
10 website encouraged and enabled Obama's supporters to create accounts, solicit votes and
11 contributions, and organize events.²

12 At the top of the Concert's page on MyBO, there is a graphic that includes the portion of
13 the Concert's sign that depicts the singer, states that it is a fundraiser for the "Obama Campaign,"
14 and lists the names and corporate logos of M&A Development, Senate Realty, and Square Root
15 Sales under the Obama Campaign logo, Obama campaign website address, and the title
16 "Individual in-kind contributor affiliations." No individuals' names are listed with the corporate
17 names and logos in this graphic. The Concert's MyBO page also includes text that details the
18 Concert's date, location, the phone number of the theater's box office, and the cost of

² The link from the main page of the Obama campaign website to its MyBO section states "ORGANIZE LOCALLY WITH OUR ONLINE TOOLS." An instructional video posted on the MyBO website teaches supporters how to use these tools. For example, by typing their address, supporters could obtain from OFA a list of their neighbors to contact, flyers to print and hand out, and the means to report back the results of their contacts with voters so that the campaign "can capture and use that information." Also, as the Concert's web page demonstrates, the MyBO site enabled supporters to create their own web page that solicited contributions, send email messages to their contacts, and organize their own events. The Obama supporters' organizing performance statistics (e.g., events attended, events organized, contributions raised) are recorded and displayed. For fundraising, the site enables the supporter to set a fundraising goal, email their contacts with a personal message soliciting contributions, and track the contributions they raise. The Concert's page on the MyBO site includes a title near the top of the page that states "Personal Fundraising." The MyBO site, including its fundraising section and instructional video, does not contain any warnings that contributions should not be raised using the funds or resources of sources prohibited by the Act, such as corporations, labor unions, and foreign nationals.

1 tickets/donations. There is also a link for making contributions online that resembles a
2 thermometer indicating the degree to which the Concert's fundraising goal has been met. It
3 appears that the Concert for Change organizer(s) set a goal of \$15,000 or \$30,000 (the Concert's
4 web page inconsistently indicates both of these figures as the Concert's fundraising goal). See
5 text describing the Concert for Change states that contributions will go to OVF, that "your
6 donation is your ticket," and that the box office will have a record of "your" donation. The
7 minimum donation was \$35 although the suggested donation was \$100-500 and the maximum
8 donation was \$4,600. The page concludes with the statement "Many thanks to our generous
9 individual in-kind contributing sponsors" and the same list of names and companies as in the
10 sign described above.

11 Consistent with the sign described above, which indicated that the Concert was a
12 fundraiser to benefit OFA, the MyBO online contribution link on the Concert's webpage
13 includes the text, "Obama '08," which suggests that contributions made through the website
14 were made to OFA. However, the Concert's web page on MyBO also states that "100% of ALL
15 donations go directly to the Obama Victory Fund," the OFA/DNC joint fundraiser.³ Thus, it may
16 have been unclear to contributors whether the recipient of the contributions made through this
17 web page was OFA or OVF. Neither the Concert's MyBO web page nor the contribution page
18

³ On May 19, 2009, the Commission mailed a letter to OFA asking it to clarify its response, specifically, which text on the Concert's MyBO web page was written by the Concert's organizer and which was written by OFA, and whether, at the time of the Concert, contributions made through OFA's MyBO web site were made to OFA, to OVF, or to another committee. OFA did not respond.

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1
2 currently connected to the contribution link on the Concert's MyBO web page contain a joint
3 fundraising notice.⁴ See 11 C.F.R. § 102.17(c).

4 **C. Businesses**

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6 The Concert's promotional materials list the Businesses and affiliated individuals as
7 "individual in-kind contribution sponsors," and one web page listed the Businesses as "In-Kind
8 Sponsors" without the names of any individuals. The Businesses identified in the promotional
9 materials are: (a) Square Root Sales, affiliated with Chase Alan Moore; (b) Senate Realty,
10 affiliated with Lisa Williams, Cher Castillo Freeman, and James Williams; and (c) M&A
11 Development, affiliated with Anthony Washington.

12 1. Square Root Sales

13 The Concert's promotional materials indicated that Chase Alan Moore was affiliated with
14 "Square Root Sales." He is also the registered agent for an entity called "Square Root, LLC."
15 The available information indicates that Square Root Sales is the name of a team of real estate
16 agents at Senate Realty Corporation which was to be distinguished from Square Root, LLC,
17 which had no connection to the Concert for Change. According to the website of Square Root
18 Sales, Moore is the leader of the Square Root Sales team. The available information also
19 indicates that one of the members of the Square Root Sales team is Steve Washington, the

⁴ Currently, a disclaimer on the MyBO site says that it is being maintained by "Organize for America," a project of the Democratic National Committee. The donation link on the website leads to a page stating, in part: "Our success required unprecedented resources, and the Democratic National Committee played a major role on the ground efforts that generated record turnout up and down the ticket . . . Please make a donation to the DNC to help fund the efforts it undertook in 2008." Organize for America is the group created within the DNC after the November 2008 election to continue the grassroots organizing begun by OFA and assume control OFA's list of 13 million email addresses. See Chris Cillizia, *Obama Announces Organizing for America* (January 17, 2009) found at <http://voices.washingtonpost.com/thefix/white-house/obama-announces-organizing-for.html>; see also Jim Rutenberg and Adam Nagourney, *Melding Obama's Web to a YouTube Presidency* (January 25, 2009) found at <http://www.nytimes.com/2009/01/26/us/politics/26grassroots.html>.

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1 performer at the Concert. The available information indicates that neither the Square Root Sales
2 team nor Square Root, LLC, made a contribution to the Concert. Rather, Moore, using personal
3 funds, made an in-kind contribution within the limits of the Act to support the Concert.

4 2. Senate Realty Corporation
5

6 Senate Realty Corporation is incorporated in Washington, D.C. Lisa Williams is Senate
7 Realty Corporation's principal broker and a co-owner; her co-owners are James C. Williams and
8 Cher Castillo, the other two individuals whose names appear on the Concert for Change
9 promotional materials with the Senate Realty Corporation name and logo. The available
10 information indicates that Ms. Williams worked on the Concert for Change as a volunteer acting
11 in her personal capacity and not as a representative of Senate Realty, and that the use of the
12 Senate Realty logo was not meant to imply a corporate sponsorship of the event. The available
13 information also indicates that Ms. Williams made an in-kind contribution, paid by a check
14 drawn from her personal checking account, to pay for expenses related to the Concert, and that
15 no Senate Realty funds were used in connection with her contribution.

16 3. M&A Development, LLC

17 The available information indicates that M&A Development, LLC, made no contribution,
18 either by using its corporate treasury funds or through an in-kind contribution. M&A has no
19 employees, revenues, or expenses. The singer at the concert, Steve Washington, is the brother of
20 Anthony Washington, the person affiliated with M&A Development in the Concert's
21 promotional materials. The available information indicates that Anthony Washington,
22 personally, contributed \$1,000 to the event.

IV. ANALYSIS

A. Alleged Corporate Contributions

The complaint alleged that the Concert's promotional materials, including web pages soliciting contributions on the OFA website, included the logos of three businesses identified as "individual in-kind contributors (sponsors)," implying that Obama for America knowingly accepted prohibited corporate contributions. Complaint at 3-4. Neither a federal candidate nor a political committee may knowingly accept a contribution from a corporation. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(d). OFA did not disclose receiving contributions from the Businesses. *See* 2 U.S.C. § 434(b)(3).

Corporations, such as Senate Realty Corporation, are prohibited from making any contributions to candidates for federal office, including facilitating the making of a contribution by using its corporate resources to engage in fundraising activities in connection with any federal election. *See* 2 U.S.C. § 441b(a); 11 C.F.R. § 114.2(f)(1). A limited liability company ("LLC") such as M&A Development, LLC, is considered a corporation or a partnership under the Act depending on whether it elects to be treated by the Internal Revenue Service as a corporation or a partnership. *See* 11 C.F.R. § 110.1(g). If an LLC is considered to be a partnership, it may make contributions to a candidate for federal office subject to the limit in 2 U.S.C. § 441a(a)(1)(A), which was \$2,300 during the 2008 election cycle. *See* 11 C.F.R. § 110.1(e). A contribution by a partnership is attributed to the partnership and to each partner. *Id.* By contrast, the available information indicates that Square Root Sales is an unincorporated team of real estate agents working for Senate Realty Corporation. Thus, it does not appear to be a separate legal entity with its own resources.

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1 It is not clear from the Concert's promotional materials whether the Concert's "sponsors"
2 were the named individuals acting in their personal capacity, or were the businesses associated
3 with those individuals. For instance, the Concert's sign states "Many thanks to our *individual in-*
4 kind contributors (sponsors) affiliated with the following organizations" (emphasis added), and it
5 lists the names of individuals above their affiliated corporate logos. The Concert's MyBO web
6 page also thanks the Concert's "generous individual in-kind contribution sponsors" and lists the
7 same individual names and business names. The Concert's MyBO webpage also includes a
8 graphic that identifies the Businesses as "Individual in-kind contributor affiliations" but does not
9 list the individuals associated with the Businesses within the graphic.

10 The available information indicates that no corporate or other business entity's funds
11 were used to pay for the costs of the Concert. Rather, individuals named in the promotional
12 materials used their personal funds and volunteered in their individual capacity.⁵ A related issue,
13 however, is whether the inclusion of business entity names and logos in the Concert's
14 promotional materials constituted a contribution by those businesses.

15 Although the use of the companies' names and logos in this matter may have constituted
16 a contribution from the Businesses to the Committees, for the reasons set forth below, we
17 recommend that the Commission dismiss the allegation that OFA violated the Act by knowingly
18 accepting contributions from the Businesses.

19 A contribution includes anything of value made by any person for the purpose of
20 influencing a Federal election. 2 U.S.C. § 431(8)(A)(i). The term "anything of value"

⁵ A search of the FEC disclosure database did not reveal any disclosures by OFA indicating that they received contributions from the individuals named in the Concert's promotional materials. The available information indicates that Lisa Williams disclosed a \$900.87 personal in-kind contribution to OFA, comprising a September 29, 2008, payment to reserve the Atlas Theater for the Concert.

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1 encompasses any goods or services provided without charge or at less the usual and normal
2 charge unless otherwise specifically exempted. *See* 11 C.F.R. § 100.52(d)(1). Corporate names,
3 trademarks, and service marks can be valuable corporate resources, and corporations may invest
4 substantial resources in choosing a trademark, developing its value, and defending it. A
5 trademark is a limited property right in a “particular word, phrase or symbol.” *See New Kids on*
6 *the Block v. News America Pub., Inc.*, 971 F.2d 302, 306 (9th Cir. 1992). Trade names are also
7 protected when they acquire a “secondary meaning” in that they “symbolize a particular
8 business.” *Madrigal Audio Labs., Inc. v. Cello, Ltd.*, 799 F.2d 814, 822 (2d Cir. 1986).

9 A corporation’s name and trademark, therefore, are things of value owned by the
10 corporation. Because the Act prohibits corporations from contributing anything of value to
11 committees, or using their resources to facilitate contributions to committees, a donation by a
12 corporation of its trademark to a committee (for example, to use on a solicitation for
13 contributions to a committee or to indicate the corporation’s support for a candidate) would
14 constitute an impermissible corporate contribution.

15 Accordingly, the Commission has previously considered corporate names and trademarks
16 to be things of value. In MUR 5578 (Wetterling for Congress), the complaint alleged that a
17 committee received a corporate contribution when it allegedly used a corporation’s trademark
18 (America’s Most Wanted) in a campaign ad. *See* MUR 5578 Complaint at 1-2 . The
19 Commission approved the recommendation of the General Counsel’s Office to find no reason to
20 believe that Wetterling for Congress violated the Act for several reasons, including that the
21 committee paid for all advertising expenses, the advertisement did not include or suggest a
22 corporate endorsement, and the fact that the alleged corporate logo used in the campaign ad at

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1 issue was not the alleged contributing corporation's logo. *See* MUR 5578 Certification of
2 Commission's Actions on February 22, 2006; First General Counsel's Report at 4-8.

3 In Advisory Opinion 2007-10 (Reyes), the Commission concluded that a committee
4 holding a fundraising golf tournament could not give recognition to its contributors by posting
5 signs at particular holes with the contributors' names and job titles as well as the name,
6 trademark, or service mark of their employers. *See* AO 2007-10 (Reyes) at 3. The AO requestor
7 stated that its inclusion of the names, trademarks, and service marks of its contributors' corporate
8 employers was intended to encourage contributions. *Id.* at 2. The Commission concluded that
9 corporate names, trademarks, and service marks "are corporate resources" and, because neither a
10 corporation nor its agents may use the corporation's resources to facilitate the making of
11 contributions to a federal political committee, the proposed activity would violate the Act. *Id.* at
12 2-3. In AO 2007-10 (Reyes), the Commission distinguished AO 1984-43 (Brunswick) and AO
13 1978-77 (Aspin), in which the Commission concluded that a candidate's endorsers may be
14 identified with their corporate positions in campaign-funded advertisements, noting that neither
15 involved the use of corporate resources to facilitate contributions and that both predated the
16 Commission's corporate facilitation regulations. *Id.* at 3; *see also Corporate and Labor*
17 *Organization Activity; Express Advocacy and Coordination with Candidates Explanation and*
18 *Justification*, 60 Fed. Reg. 64260, 64274-75 (Dec. 14, 1995).⁶

⁶ The Commission has previously considered a specific regulation applicable to the use of corporate logos when promulgating regulations in response to the Supreme Court's decision in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986). The Commission considered alternative drafts and ultimately was unable to reach a majority decision. *See Corporate and Labor Organization Activity; Express Advocacy and Coordination with Candidates Explanation and Justification*, 60 Fed. Reg. 64260, 64268 (December 14, 1995). Nevertheless, as discussed above, and as observed by the Commission in MUR 5578 and AO 2007-10 after the 1995 rulemaking, the use of a corporate name or logo is something of value within the meaning of 2 U.S.C. § 441b(a).

1 In contrast to the circumstances in *Wetterling*, the Committees did not pay for the
2 expenses associated with the Concert's promotional materials, some of the Concert's
3 promotional materials suggest a corporate endorsement, and the names and logos used in the
4 Concert's promotional materials were those of the Businesses. Although the corporate names
5 and logos in the Concert's solicitations were things of value, the value of the names and logos of
6 these particular businesses is likely insubstantial, and the fundraising event was relatively modest
7 in size. The Concert raised \$13,500 and was attended by less than 200 people.

8 OFA stated in its response that it never hosted a "Concert for Change," had no knowledge
9 of the Concert prior to receiving the complaint, and that the Concert was not an official or
10 authorized OFA event, despite it being publicized on the OFA website. OFA Response at 2-3.
11 "Because the event was conducted entirely without the Committee's express or implied
12 authorization, the organizers of the event were not acting as [OFA's] agents" and, therefore,
13 OFA did not knowingly accept a corporate contribution "and cannot otherwise be held liable for
14 the actions of individual volunteers[.]" *Id.* at 3.

15 OFA encouraged its supporters to engage in fundraising and provided the necessary tools
16 to do so, apparently without warnings to make sure fundraising efforts complied with the Act,
17 including that corporate resources could not be used to pay fundraising costs. As noted above,
18 the available information indicates that none of the Businesses contributed money directly to the
19 Committees or paid for the costs of the Concert. The only contributions made by the Businesses
20 appear to have been in-kind contributions resulting from the use of the company names and
21 logos to solicit contributions to the Committees. Nevertheless, given the modest size of the
22 fundraising event, which raised only \$13,500 and was attended by less than 200 people, and the
23 fact that the value of the company names and logos is not likely substantial in this case, further

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1 action by the Commission is not warranted to investigate whether the Committees knowingly
2 accepted or received in-kind contributions that they failed to disclose and that violated the Act's
3 contribution limitations or source prohibitions. *See Heckler v. Chaney*, 470 U.S. 821, 831
4 (1985).

5 Accordingly, the Commission dismisses the allegation that Obama for America and
6 Martin Nesbitt, in his official capacity as treasurer, violated the Act based on the alleged receipt
7 of contributions from Square Root Sales, Senate Realty Corporation, and M&A Development,
8 LLC.

9 **B. Alleged Failure to Include Joint Fundraising Notices**

10
11 The complaint alleges that the Concert's promotional materials solicit contributions to
12 OVF, which is a joint fundraising committee, and that the solicitations fail to include the proper
13 joint fundraising notice.⁷ Complaint at 4. As discussed above, some of the Concert's
14 promotional materials appear to solicit contributions to OVF, while others solicit contributions to
15 OFA.⁸ OFA's response averred that it cannot be held liable for the failure to include joint
16 fundraising notices on the Concert's promotional materials because the Concert was not an
17 authorized event. OFA Response at 2-3.

⁷ As cited to in the complaint, 11 C.F.R. § 102.17(c)(2), states that for joint fundraising activity conducted under this section, "[i]n addition to any notice required under 11 C.F.R. § 110.11, a joint fundraising notice shall be included with every solicitation for contributions." Under the regulations, such joint fundraising notices must include the names of all committees participating in the joint fundraising activity, the allocation formula to be used to distribute joint fundraising proceeds, a statement informing contributors that they may designate contributions for a particular participant in the joint fundraising activity notwithstanding the allocation formula, and notice that the formula may change to avoid the making and receipt of excessive contributions. *See* 11 C.F.R. § 102.17(c)(2)(i)(A)-(D).

⁸ For example, the Concert's sign states that the Concert is a fundraiser for "The Obama campaign," i.e., OFA, and included the OFA logo and website address. The Concert also has a webpage that solicits contributions on the OFA website, repeats the statements on the sign, states separately that the Concert was a fundraiser for the Obama Campaign, and includes a link to the OFA online contribution webpage. Further, the link to the OFA contribution page incorporates the OFA logo under the heading "Contribute Now." However, text on the Concert's OFA website also states "100%" of the contributions "go directly to the Obama Victory Fund."

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1 It does not appear that the Concert's organizers were authorized by OFA to raise funds
2 for OVF. Relevant to this matter, OVF is a registered joint fundraising committee of OFA and
3 the DNC Services Corp./Democratic National Committee. *See* OVF Statement of Organization
4 (FEC Form 1), dated June 5, 2008. The Concert's organizers were not OVF participants, nor
5 were they a party to the agreement to fundraise jointly. OFA specifically denied that the Concert
6 was an authorized event, and denied any knowledge of its existence. *See* OFA Response at 3.
7 Although OFA encouraged its supporters to engage in fundraising for OFA and gave them the
8 resources to do so, including the MyBO fundraising tools and space on the OFA website, there is
9 no information to suggest that OFA authorized the Concert's organizers to engage in fundraising
10 for OVF, or provided any tools to do so.

11 Moreover, there is no information to suggest that OFA was aware of the Concert
12 organizers' attempt to solicit funds for OVF or that OVF ever received funds from the concert
13 organizers' efforts. The Concert's online contributions were made through contribution pages on
14 the OFA and DNC websites. There is no indication that the Concert's organizers had any control
15 over the recipient(s) of online contributions made on the OFA website, even if they had intended
16 the funds to go to OVF. Although the Concert's organizers created the Concert's sign and wrote
17 some of the text which appeared on part of the Concert's OFA webpage, such as the name, date,
18 and location of the event, it nonetheless appears that the content of the OFA website related to
19 the making of online contributions was not under the control of the Concert's organizers.⁹ The

⁹ For example, the contribution link on OFA's website included the OFA logo under the word "Contribute" and the OFA contribution link transferred users to a contribution page that does not appear to have been under the control of the Concert's organizer(s). It also does not appear that persons using the MyBO tools of the OFA website had any control over where online contributions made on the OFA site were ultimately directed.

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1 Commission does not have any information to suggest that contributions made through the OFA
2 website, unless explicitly stated otherwise, went to any committee other than OFA.¹⁰

3 Thus, the available information does not give rise to a reasonable inference that OFA
4 may have authorized the Concert's organizers to engage in fundraising for OVF. Therefore, the
5 Commission finds no reason to believe that Obama for America, and Martin Nesbitt, in his
6 official capacity as treasurer, violated 11 C.F.R. § 102.17(c) by failing to include a joint
7 fundraising notice in the Concert's solicitations.

8 **V. CONCLUSION**

9 The Commission dismisses the allegation that Obama for America and Martin Nesbitt, in
10 his official capacity as treasurer, violated the Act based on the alleged receipt of contributions
11 from Square Root Sales, Senate Realty Corporation, and M&A Development, LLC, as a matter
12 of prosecutorial discretion. *See Heckler v. Chaney*, 470 U.S. 821, 831 (1985). Additionally, the
13 Commission finds no reason to believe that Obama for America, and Martin Nesbitt, in his
14 official capacity as treasurer, violated 11 C.F.R. § 102.17(c) by failing to include a joint
15 fundraising notice in the Concert's solicitations.

¹⁰ It appears that in some specific instances, contributions to OVF were made through the OFA website. For example, an official OVF solicitation for an official joint fundraising event featuring Sarah Jessica Parker directs potential donors to make contributions to OVF online at <http://donate.barackobama.com/page/contribute/DCSJP>, which is an OFA web address. Under those circumstances, a joint fundraising notice would have been required. *See* 11 C.F.R. § 102.17(c).